

will not be considered, unless accompanied by a showing of good cause acceptable to the Commissioner. Thereafter, final findings of fact, conclusions, and notice of priority shall be issued by the Commissioner.

(b) The decision shall be entered by the Commissioner against a party whose preliminary statement alleges a date of determination later than the filing date of the other party's application.

§ 97.221 Status of claims of defeated applicant.

Whenever a final notice of priority has been issued by the Commissioner in a priority proceeding, and the time limit for an appeal from such decision has expired, the claim or claims constituting the issue of the priority stand finally disposed of without further action by the Commissioner.

§ 97.222 Second priority contest.

A second priority contest between the same parties shall not be entertained by the Commissioner for the same novel variety.

APPEAL TO THE SECRETARY

§ 97.300 Petition to the Secretary.

(a) Petition may be made to the Secretary from any final action of the Commissioner denying an application or refusing to allow a certificate to be issued, or from any adverse decision of the Commissioner made under §§ 97.18(c), 97.107, 97.201(e), and 97.220.

(b) Any such petition shall contain a statement of the facts involved and the point or points to be reviewed, and the actions requested.

(c) A petition to the Secretary shall be filed in duplicate and accompanied by the prescribed fee (see § 97.175).

(d) Upon request, an opportunity to present data, views, and arguments orally, in an informal manner or in a formal hearing, shall be given to interested persons. If a formal hearing is requested, the proceeding shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title.

(e) Except as otherwise provided in the rules in this part, any such petition not filed within 60 days from the action complained of shall be dismissed as untimely.

[58 FR 42435, Aug. 9, 1993, as amended at 60 FR 8464, Feb. 14, 1995]

§ 97.301 Commissioner's answer.

(a) The Commissioner may, within such time as may be directed by the Secretary, furnish a written statement to the Secretary in answer to the appellant's petition, including such explanation of the reasons for the action as may be necessary and supplying a copy to the appellant.

(b) Within 20 days from the date of such answer, the appellant may file a reply statement directed only to such new points of argument as may be raised in the Commissioner's answer.

§ 97.302 Decision by the Secretary.

(a) The Secretary, after receiving the advice of the Board, may affirm or reverse the decision of the Commissioner, in whole or in part.

(b) Should the decision of the Secretary include an explicit statement that a certificate be allowed, based on an amended application, the applicant shall have the right to amend his or her application in conformity with such statement and such decision shall be binding on the Commissioner.

§ 97.303 Action following the decision.

(a) Copies of the decision of the Secretary shall be served upon the appellant and the Commissioner in the manner provided in § 97.403.

(b) When an appeal petition is dismissed, or when the time for appeal to the courts pursuant to the Act has expired and no such appeal or civil action has been filed, proceedings in the appeal shall be considered terminated as of the dismissal or expiration date, except in those cases in which the nature of the decision requires further action by the Commissioner. If the decision of the Secretary is appealed or a civil action has been filed pursuant to the Act, the decision of the Secretary will be